

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Satellite Home)
Improvement Act of 1999)
)
Application of Network Nonduplication,)
Syndicated Exclusivity, and Sports)
Blackout Rules to Satellite Retransmissions)

CS Docket No. 00-2

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF MOTION PICTURE
ASSOCIATION OF AMERICA, INC.

Motion Picture Association of America, Inc. ("MPAA"), in accordance with the Notice of Proposed Rulemaking ("Notice") released January 7, 2000 in the captioned docket, submits its comments on application of the syndicated exclusivity ("syndex") rules to satellite carriers' retransmission of nationally distributed superstations.¹ Application of the rule to satellite carriers was mandated by the Satellite Home View Improvement Act of 1999 ("SHVIA"), Pub. L. No. 106-113, 113 Stat. 1501, Title I (1999). MPAA agrees with the Commission's assessment that applying the syndex rules to satellite retransmission strikes a balance between the public benefit of access to superstations and the protection of rights holders' contractual rights. Notice ¶ 9. Applying the rules to satellite retransmission would further the congressional goal of increased parity in the rules governing satellite and cable retransmissions.

In MPAA's view, parity would be supported by incorporating the amended syndex provision for satellite carrier retransmission into existing Section 76.151, *et seq.*

¹ The Notice also seeks comment on application of the network nonduplication and sports blackout rules to satellite carriers' retransmission. MPAA does not, at this time, take any position on those two issues, but reserves its right to do so.

Notice ¶ 12. Such incorporation would clearly signal that cable systems and satellite carriers are subject to similar treatment, which is how Congress intended that they be treated. There does not appear to be any compelling reason to create a separate set of rules of satellite carriers, particularly when those rules would largely repeat what is already contained in the cable syndex rules.

MPAA agrees with the assessment that nationally distributed superstations within the meaning of SHVIA are and will be limited to KTLA, WPIX, KWGN, WSBK, WWOR, and WGN because of the date-specific statutory conditions. Notice ¶ 6.²

As to the question of whether foreign stations are affected by application of the syndex rules to satellite carriers, Notice ¶ 6, application of the rules to carriers requires that duplicated programs from foreign stations be blacked out, if requested. The rules will necessarily apply to all satellite carriers that enjoy the benefits of the compulsory license. By definition, all satellite carriers covered by the compulsory license are also subject to the Commission's rules and regulations. *See, e.g.*, Section 122(a)(2) (enacted in § 1002(a) of SHVIA)(requiring a satellite carrier to be in compliance with FCC rules, regulations and authorizations to be eligible for local compulsory license).

On the other hand, foreign broadcast stations could not request syndex protection under the satellite rules against programs being imported into their home markets. Only "broadcast stations licensees," § 76.153(a), are entitled to exercise syndex rights against cable systems. There is no reason to expect that this provision would change when the rule is applied to satellite carriers. Thus, only U.S. stations would be allowed to seek the

² MPAA agrees with the Commission's assessment that "a superstation might be significantly viewed in areas surrounding its city of license based upon its over-the-air broadcast signal from the station transmitter rather than by satellite." Notice ¶ 18, n. 45.

protection offered by these rules.

Notwithstanding the Commission's view that the SHVIA statutory definitions "generally contemplate [television station] entities within the United States," *id.* (*but see* Section 122(j)(5)(B) (defining "television broadcast station")), the protection offered by the syndex rules requires that duplicated programs on foreign stations be blacked out.

Under the existing cable rules, a cable system "shall not carry that program as broadcast by any other television signal." Section 76.151 (emphasis added). This provision is clear that carriage from any source, whether domestic or foreign, is prohibited. Again, there is no reason for this prohibition to change when the rules are applied to satellite.

The Notice, ¶ 22, requests comment on whether rights holders should be allowed to seek syndex protection directly from satellite carriers for a one year period from initial licensing of a program. Rights holders syndicate programming on a market-by-market basis with a single station being granted an exclusive license to broadcast a program in each market. Distant importation of programs means the loss of exclusivity in a market. Stations are generally not willing to pay as much for duplicated programs as they are for exclusive programs. Distant importation thus directly harms rights holders by reducing the value of their syndicated programming. This harm occurs regardless of whether duplication is caused by cable or satellite carrier importation. Allowing rights holders to notify carriers directly, as holders can do with cable systems, gives holders another means to protect the value of their programs as well as offers parity in the operation of the rules in both the cable and satellite contexts.

The Notice also seeks comment, ¶ 22, on whether use of the current notification

periods in the satellite carrier context is appropriate. The current notification periods have proved to be workable for the parties in the cable arena. This alone would suggest that they should be appropriate in the satellite carrier context. Using the same notification periods for both cable and satellite reduces the administrative burden on rights holders and stations by allowing them to send a single set of notices to cable and satellite, rather than forcing them to send one notice to cable systems at one time and a virtually identical notice to carriers at another time. It would also minimize the possibility that protection would inadvertently be lost because of differing notification requirements.

The Commission seeks comment on how to apply the syndex rules geographically to satellite carriers. Notice ¶ 30. The cable rules are based on the community unit “which correspond to separate and discrete communities or municipal entities that comprise cable systems.” *Id.* (footnote omitted). The boundaries of community units do not correspond exactly to the boundaries of the 35-mile specified zone for the syndex rules. In cases where a community unit falls partially within the specified zone, syndex protection is required throughout the unit, even to subscribers who are physically outside the specified zone. The Notice asks whether the same community unit concept should be applied to satellite carriers, or whether some other approach, such as a household analysis based on zip codes, should be used.

MPAA submits that it is more appropriate to administer the satellite carrier syndex rules on a household basis using zip codes, rather than to administer the rules using the community unit concept. Satellite carriers are already required to report subscribers on a household basis identifying a street address, including county and zip code. *E.g.*, 17 U.S.C. § 122(b)(1), added by Sec. 1002(a) of SHVIA. Accordingly, such

information is readily available, and thus its use in the syndex rules context is administratively feasible. Generally, the same zip code applies to all addresses, including post office boxes and rural route numbers, in the area covered by the zip code. Zip code areas thus offer a good substitute for community units in applying the syndex rules to satellite carriers. While the boundaries of zip code areas may not correspond exactly to the boundaries of a specified zone, the same situation is present in the cable context.

Cable systems must black out all subscribers in a community unit that falls partially within a specified area. Likewise, a general rule in the satellite context should require a carrier to black out all satellite subscribers within a zip code area that falls partially within the specified zone. Because the satellite rules would apply on a household basis, however, the Commission could establish a waiver procedure under which subscribers who are outside the specified zone, but within an affected zip code area, could petition not to have their programming blacked out. This procedure serves the general purposes of the statute (parity with cable and protection of rights holders) without unduly depriving satellite subscribers who are beyond the specified zone of programming.

Use of the DMA to define the local market does not affect how the specified zone would be determined for the syndex rules in the satellite context. Notice ¶ 30. As noted, ¶ 20, the “maximum zone of protection allowed under the [syndex] rules is 35 miles surrounding a television station’s city of license in a non-hyphenated television market and 35 miles surrounding each named city in any size hyphenated market.” Because the zone of protection is defined by a set radius around the city of license, how the market is defined will not change the scope of syndex protection.

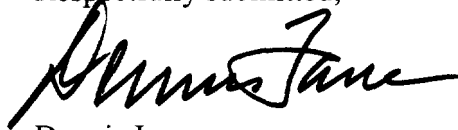
MPAA is concerned with the Commission's apparent assumption that "all contractual arrangements" regarding program syndication can be protected "because the satellite carrier . . . needs the retransmission consent of the independent station." Notice ¶ 32. Retransmission consent does not cover program rights, and thus could not protect syndication rights in the programming broadcast by a station. Indeed, program license agreements will often expressly note that a station has no right to authorize the carriage of programs outside the station's home market through retransmission consent agreement. Moreover, stations have little incentive to enforce exclusivity beyond their home markets because they are not adversely affected by carriage of the same program into markets outside their home markets. Consequently, the assumption that the interests of rights holders are protected by retransmission consent, ¶ 32, is not necessarily true.

In MPAA's view, the protection afforded by the syndex rules should be applied to digital as well as analog channels for cable systems and satellite carriers. Notice ¶ 36. The better interpretation of SHVIA on this point is that Congress intended to apply the syndex rules to both analog and digital broadcast signals. A normal rule of statutory construction indicates that where separate treatment is afforded in some parts of legislation, but not others, separate treatment applies only where expressly required. In the present situation, that means separate treatment applies to digital only in the two instances identified. ¶36 n. 80. As Congress did not indicate that digital signals should be treated differently under the syndex rules, no grounds exist for the Commission to order separate treatment.

There is no meaningful distinction between analog and digital signals for application of the syndex rules to satellite carriers (or to cable systems). Whether the

importation of a program is via an analog or a digital channel, the end result is the same: the value of programming in the syndication marketplace has diminished by the resulting duplication. This means that removing digital signals from the scope of the syndex rules protection would defeat the rules' purpose of maintaining program exclusivity in local markets. This cannot be the intended result of applying these rules to satellite carriers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis Lane", written in a cursive style.

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